

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1915.

No. 2812

229

No. 3, SPECIAL CALENDAR.

THE UNITED STATES OF AMERICA UPON THE RELATION
OF I. Q. H. ALWARD, APPELLANT,

vs.

J. WILMER LATIMER, JUDGE OF THE JUVENILE COURT
OF THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED APRIL 12, 1915.

PRINTED AUGUST 5, 1915.

Court of Appeals of the District of Columbia.

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OF THE DISTRICT OF COLUMBIA, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 2812.

THE UNITED STATES OF AMERICA upon the Relation of I. Q. H.
ALWARD, Appellant,
vs.
J. WILMER LATIMER, &c.

a Supreme Court of the District of Columbia.

At Law. No. 57414.

THE UNITED STATES OF AMERICA upon the Relation of I. Q. H.
ALWARD, Petitioner,
vs.
J. WILMER LATIMER, Judge of the Juvenile Court of the District of
Columbia, Appellee.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 *Petition for Writ of Certiorari.*

Filed November 12, 1914.

In the Supreme Court of the District of Columbia.

At Law. No. 57414.

THE UNITED STATES OF AMERICA upon the Relation of I. Q. H.
ALWARD, Petitioner,
vs.
J. WILMER LATIMER, Judge of the Juvenile Court of the District of
Columbia, Defendant.

To the Honorable Justices of the Supreme Court of the District of Columbia, your petitioner respectfully represents:

1. That he is a citizen of the United States.

2. That he is a member of the Bar of this Honorable Court and has been since December 1899.

3. That on the 29th day of October, 1914 he was served with a subpoena from the Juvenile Court of the District of Columbia requiring him to attend said court at 1.30 P. M. of that day as a witness for the defendant, one, John Zell, in case No. 17385, of that court. That upon attending said court in obedience to its summons he was surprised to find that the judge of said court was about to attempt an investigation of your petitioner's conduct in his relations with a former client, the said John Zell, and, over the protest of your petitioner, proceeded to hear testimony in an effort to show that petitioner had taken the said John Zell to relator's farm in Maryland while a non-support cause was pending against him in the said Juvenile Court and had, thereby, been guilty of contempt. Notwithstanding the fact that the evidence clearly showed that the said Zell went to relator's farm only after negotiations extending over several years and then with the understanding that he should return for trial, the respondent found your petitioner guilty of having advised, aided and abetted the said Zell in absenting himself from the jurisdiction, in order to hinder and delay the administration of justice. The evidence was conclusive that whatever advice was given was given in the office of relator, in the Columbian Building, 416 5 Street. Immediately after announcing his decision in the Zell case the respondent caused the following alleged rule to be served upon your petitioner.

In the Juvenile Court of the District of Columbia.

No. 18878.

UNITED STATES

VS.

I. Q. H. ALWARD.

Rule to Show Cause.

Whereas it appears that one I. Q. H. Alward, an Attorney at Law in this District, did attempt to hinder and delay the administration of justice in this Court, in that in the case of the United States vs. John Zell, No. 17385, pending in this Court, he did advise said Zell to absent himself from the jurisdiction of this Court and thus evade the process and other orders of this Court, and did aid and abet said Zell in so absenting himself, it is by the Court, this 29th day of October, 1914,

Ordered That the said I. Q. H. Alward show cause herein, if any he has, on Monday, November 2, 1914, at ten o'clock A. M., why he should not be adjudged in contempt of this Court, and suspended from practice herein.

Provided, that a copy of this order be served on said I. Q. H. Alward this day.

(Signed)

J. W. LATIMER, *Judge*.

True Copy.

Test:—

[Seal Juvenile Court, D. C.]

WALDO BURNSIDE,

Clerk Juvenile Court, D. C.

3 4. That on November 2, 1914, your petitioner being unable to fully complete his answer to the alleged rule of October 29th, attempted by telephone and by a request made in person to the Judge upon the opening of said court, sought to secure an extension of time of from one to two hours, within which to complete his answer. The respondent not only refused this right but refused to permit your respondent to secure the attendance of his counsel and the services of a stenographer and required relator to proceed to an immediate hearing. That your petitioner, thereupon, interposed objections to the jurisdiction of the said court upon the ground:

1. That there is no authority vested in the Juvenile Court to institute of its own motion and to be heard before it, any proceedings. That the act of creation provides that proceedings shall be instituted upon information, etc.

2. That being an inferior court of limited jurisdiction it has no power to punish for a contempt committed out of its presence.

3. That disbarment proceedings can only be instituted in the way provided by law and as the Juvenile Court has no Bar no person can be disbarred from practice before it.

4. That if any offense had been committed it was the common law offense of obstructing justice over which the Juvenile Court has no jurisdiction.

The respondent declined to rule on your petitioner's objections and proceeded to hear testimony, which tended to show that the defendant, John Zell, for more than two years had sought employment with your petitioner upon his farm in Maryland, and that for a period of six weeks or two months prior to his going there he, and the members of his family, had been persistent in their efforts
4 to induce your petitioner to take the said Zell, his wife and four children, under an agreement that they were to receive their board in return for his labor; that this arrangement was brought to the attention of Mr. Gus Schultz, prosecuting officer in the said court, and the request made by your petitioner that the proceedings against the said Zell be held in abeyance as his wife and family would be provided for and the case was about to be disposed of under this arrangement when one of the women attendants on said court injected herself into the conversation and insisted that the case be passed upon by the judge; that, thereupon, a jury trial was demanded by relator on behalf of said Zell and a date fixed for the trial, February 12, 1914, which was afterward changed by the court of its

own motion and without consulting the convenience of counsel to February 16, 1914 and that relator received notice of this change by post on the morning of February 12, the date originally agreed upon for the trial; that having a case set for trial in Criminal Court No. 2, of this Court on February 16, relator, immediately on receipt of the notice of the change of the date of the trial in the said Juvenile Court communicated with Mr. Gus Schultz, the prosecuting officer of said court, by telephone in an effort to secure a continuance to any other day and, being unsuccessful, went in person to see the said judge and stated that counsel, your petitioner, would be engaged in Criminal Court No. 2 on the date fixed by the court for the trial of the Zell case and asked him to name any day other than February 16 when the case might be tried. He declined to grant your petitioner's request. The testimony showed, further, that the de-

5 fendant, John Zell, went to the home of your petitioner on February 13, 1914, with the distinct understanding and agreement that he should return for trial and that his wife and family would not be permitted to go until the case against him had been disposed of; that on the 16th of February an alleged trial was had in the said Juvenile Court, in the absence of the defendant and his counsel, your petitioner, and a verdict of guilty returned; that on February 18, 1914 a motion for a new trial was filed, which the court declined to hear in the absence of defendant; that your petitioner tried repeatedly to induce the defendant, the said John Zell, to return to the jurisdiction and have the case against him properly disposed of; that any advice given the said Zell by your petitioner was given in the office of your petitioner in the Columbian Building, at 416 5 Street and not in the presence of the said Juvenile Court; that the said John Zell was finally forced by respondent to leave the latter's farm, returning to Washington, where he remained for more than five months before he was placed under arrest.

5. That at the conclusion of the hearing on the alleged rule aforesaid respondent took the matter under advisement and requested that a brief on the questions of law be filed, which was done on November 4, 1914.

6. That, thereafter, on the sixth of November your petitioner was served with another alleged rule, as follows:

In the Juvenile Court of the District of Columbia.

No. 18878.

UNITED STATES

VS.

I. Q. H. ALWARD.

Rule to Show Cause.

6 Whereas it appears that one I. Q. H. Alward, an Attorney at Law in this District, did attempt to hinder and delay the administration of justice in this Court, in that in the case of

United States vs. John Zell, No. 17385, pending in this Court, he did advise said Zell to absent himself from the jurisdiction of this Court and thus evade the process and other orders of this Court, and did aid and abet said Zell in so absenting himself, it is by the Court, this 5th day of November, 1914,

Ordered, as a substitute for the rule issued herein October 29, 1914, that the said I. Q. H. Alward show cause herein, if any he has, on Thursday, November 12, 1914, at ten o'clock A. M., first, why he should not be adjudged in contempt of this Court and punished therefor; and, second, why he should not be suspended from practice before this Court because of the aforesaid misconduct.

Provided, a copy of this order be served upon said I. Q. H. Alward on or before Monday, November 9, 1914.

(Signed)

J. W. LATIMER, *Judge*.

True copy:

Test:

[Seal Juvenile Court, D. C.]

WALDO BURNSIDE, *Clerk*.

7. Your petitioner avers the fact to be that the said Judge of the Juvenile Court is about to subject your petitioner to the embarrassment of another hearing for an alleged contempt, committed, if at all, according to all the evidence out of the presence of the said Court and upon an alleged rule to show cause which is not supported by any sort of a petition or affidavit under the oath of any person.

8. That the said Juvenile Court is without jurisdiction to hear and determine the issues raised by the said alleged rule to show cause, because of its being a court of limited or inferior jurisdiction and having power to punish only such contempts as may be committed in its presence; that the said issues have already been passed upon
7 by the said respondent adversely to your petitioner by his decision in the Zell case, and that your petitioner is without adequate means of protecting his rights as a citizen and a member of the Bar of this Honorable Court without the intervention of this Court by its writ of certiorari.

The premises considered your petitioner prays.

1. That the United States writ of certiorari may issue to said J. Wilmer Latimer, Judge of the Juvenile Court of the District of Columbia, requiring him to certify to this Court all the papers and records in his custody or under his control relating in anywise to the alleged rules to show cause in the alleged case of the United States vs. I. Q. H. Alward and to any trials or hearings before said Juvenile Court, or any other proceedings had, or undertaken thereunder.

2. That upon return to said writ, aforesaid, the said alleged rules to show cause and all and every action in connection therewith may be quashed and annulled by the judgment of this Court and respondent directed to cancel and set aside all proceedings undertaken to be had thereon.

3. And for such other and further relief as to the Court may seem meet.

I. Q. H. ALWARD, *Petitioner.*

F. EDWARD MITCHELL,
Attorney for Petitioner.

8 I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof that the facts therein stated upon my personal knowledge are true, and the facts therein stated upon information and belief, if any, I believe to be true.

I. Q. H. ALWARD, *Petitioner.*

Subscribed and sworn to before me the 12th day of November, 1914.

JOHN R. YOUNG, *Clerk,*
By A. W. LEVENSALE, *Ass't Cl'k.*

(Endorsed.)

Let this writ issue.

ASHLEY M. GOULD, *Justice.*

Writ of Certiorari.

Issued November 12, 1914.

* * * * *

The President of the United States to the Judge of the Juvenile Court of the District of Columbia, Greeting:

9 For sufficient reasons shown by the petition in this case you are hereby commanded to certify and send to this Court, immediately, your proceedings in the case of United States vs. I. Q. H. Alward No. 18878 with all things touching the same, as fully and entirely as it remains before you, by whatsoever names the parties may be called in said proceedings, together with this writ, that said Court may cause to be done what of right ought to be done in the premises.

Witness, The Honorable J. Harry Covington, Chief Justice of said Court, the 12th day of Nov., A. D. 1914.

JOHN R. YOUNG, *Clerk,*
By A. W. LEVENSALE,
Assistant Clerk.

Marshal's Return.

Served J. Wilmer Latimer, Judge of the Juvenile Court of District of Columbia Nov. 12, 1914.

MAURICE SPLAIN, *Marshal.*
C. R. S.

10

Return.

Filed November 14, 1914.

In the Juvenile Court of the District of Columbia.

No. 18878.

UNITED STATES

vs.

I. Q. H. ALWARD.

Rule to Show Cause.

Whereas it appears that one I. Q. H. Alward, an Attorney at Law in this District, did attempt to hinder and delay the administration of justice in this Court, in that in the case of United States vs. John Zell, No. 17385, pending in this Court, he did advise said Zell to absent himself from the jurisdiction of this Court and thus evade the process and other orders of this Court, and did aid and abet said Zell in so absenting himself, it is by the Court, this 29th day of October, 1914,

Ordered that the said I. Q. H. Alward show cause herein, if any he has, on Monday, November 2, 1914, at ten o'clock A. M., why he should not be adjudged in contempt of this Court, and suspended from practice herein:

Provided, that a copy of this order be served on said I. Q. H. Alward this day.

(Signed)

J. W. LATIMER, *Judge.*

11

November 13, 1914.

I hereby certify under the Seal of this Court that the foregoing is a true copy of the original issued in this Court in the above-entitled cause.

WALDO BURNSIDE,
Clerk Juvenile Court of the District of Columbia.

Marshal's Return.

Served copy of the within rule to show cause on the defendant I. Q. H. Alward on this 29th day of October, 1914.

(Signed)

MAURICE SPLAIN, *Marshal.*
JOHN G. NEWMAN, *Deputy.*

Substitute to Rule to Show Cause.

* * * * *

Whereas it appears that one I. Q. H. Alward, an Attorney at Law in this District, did attempt to hinder and delay the administration of justice in this Court, in that in the case of United States vs. John

Zell, No. 17385, pending in this Court, he did advise said Zell to absent himself from the jurisdiction of this Court and thus evade the process and other orders of this Court, and did aid and abet
 12 said Zell in so absenting himself, it is by the Court, this 5th day of November, 1914,

Ordered, as a substitute for the rule issued herein October 29, 1914, that the said I. Q. H. Alward show cause herein, if any he has, on Thursday, November 12, 1914, at ten o'clock A. M., first, why he should not be adjudged in contempt of this Court and punished therefor; and, second why he should not be suspended from practice before this Court because of the aforesaid misconduct.

Provided, a copy of this order be served upon said I. Q. H. Alward on or before Monday, November 9, 1914.

(Signed)

J. W. LATIMER, *Judge.*

November 13, 1914.

I hereby certify under the Seal of this Court that the foregoing is a true copy of the original issued in this Court in the above-entitled cause.

[SEAL.]

WALDO BURNSIDE,
Clerk Juvenile Court of the District of Columbia.

Marshal's Return.

Served copy of the within rule to show cause on the defendant I. Q. H. Alward this 6th day of November, 1914.

(Signed)

MAURICE SPLAIN, *Marshal.*
 J. N. HAWKINS,
Dept. Marshal.

13

Record of Proceedings in Juvenile Court.

*	*	*	*	*	*	*
Oct. 29, 1914.	Rule to show cause why defendant should not be adjudged in contempt and suspended from practice, returnable November 2, 1914, ordered and issued. Defendant served with copy.					
Nov. 2, 1914.	Hearing in open court and case submitted.					
Nov. 5, 1914.	Substitute rule to show cause returnable November 12, 1914, ordered and issued. Defendant served with copy.					
Nov. 12, 1914.	Writ of certiorari received from Supreme Court of the District of Columbia.					
Nov. 13, 1914.	Papers and record certified to Supreme Court of the District of Columbia.					

November 13, 1914.

I hereby certify under the Seal of this Court, that the foregoing is a true copy of the record of the proceedings had in the Juvenile Court in the above-entitled case.

[SEAL.]

WALDO BURNSIDE,
Clerk Juvenile Court, District of Columbia.

14

Motion to Quash.

Filed January 7, 1915.

In the Supreme Court of the District of Columbia.

At Law. No. 57414.

UNITED STATES ex Rel. ALWARD

vs.

LATIMER, Judge of the Juvenile Court of the District of Columbia.

Now comes the respondent J. Wilmer Latimer, Judge of the Juvenile Court of the District of Columbia, and moves the Court to quash the writ of certiorari heretofore issued herein, on the following grounds:

1st. The Juvenile Court of the District of Columbia has jurisdiction to punish for contempts interfering with the administration of justice in that Court, whether committed within or without the presence of the Court.

2d. The Juvenile Court of the District of Columbia has inherent jurisdiction to suspend from practice before the Court any person guilty of the misconduct recited in the rule to show cause issued by the Court against the petitioner herein.

GEO. E. SULLIVAN,

JAMES B. ARCHER,

*Attorneys for Respondent, J. Wilmer
Latimer, Judge of the Juvenile
Court of the District of Columbia.*

15 F. Edward Mitchell, Esq., Attorney for Petitioner:

Take notice that the foregoing motion will be for hearing on Saturday, January 16, 1915, at nine thirty A. M. or as soon thereafter as counsel can be heard.

GEO. E. SULLIVAN,

JAMES B. ARCHER,

*Attorneys for Respondent, J. Wilmer
Latimer, Judge of the Juvenile
Court of the District of Columbia.*

Supreme Court of the District of Columbia.

SATURDAY, January 23, 1915.

Session resumed pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

Now come here as well the petitioner by his Attorney Mr. F. E. Mitchell, as the respondent by his Attorney Mr. George E. Sullivan; whereupon the motion of respondent filed herein to quash the Writ

of Certiorari heretofore issued herein, coming on to be heard, it is considered that said motion be, and hereby is sustained, and said Writ of Certiorari is hereby quashed and for nothing held at the cost of petitioner, to which said petitioner notes an exception.

16 The petitioner by his Attorney in open Court notes an appeal to the Court of Appeals of the District of Columbia, and the penalty of the bond on said appeal to act as a Supersedeas is hereby fixed in the sum of Fifty dollars (\$50).

Further it is considered that the motion of respondent filed herein to strike out the petition be, and hereby is overruled, to which said respondent notes an exception.

Memorandum.

February 16, 1915.—Appeal bond approved and filed.

Supreme Court of the District of Columbia.

WEDNESDAY, March 10, 1915.

Session resumed pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

Now comes here the petitioner by his Attorney of record and prays the Court to sign, seal and make part of the record his bill of exceptions taken during the trial of this cause, now for then, which is accordingly done.

17

Memorandum.

April 3, 1915.—Time to file transcript of record extended to, and including, April 12, 1915.

Assignment of Error.

Filed April 3, 1915.

* * * * *

The court erred in holding that the Court should have proceeded to final judgment before the Writ of Certiorari was applied for and issued.

F. EDWARD MITCHELL,
Att'y for Petitioner.

Designation of Record.

Filed April 3, 1915.

* * * * *

- (1) Petition for writ and affidavit.
- (2) Certiorari writ issued and Ret'd served.

- (3) Return to rule to show cause and certificate J. C.
- (4) Motion to quash.
- (5) Judgment of Court, exception.
- (6) Bond filed.
- (7) Bill of Exceptions.
- 18 (8) Assignments of Error.
- (9) Memo. of Extension.
- (10) This designation.

F. EDWARD MITCHELL,
Att'y for Petitioner.

19 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 18, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 57414 at Law, wherein The United States of America upon the relation of I. Q. H. Alward is Petitioner, and J. Wilmer Latimer, Judge of the Juvenile Court of the District of Columbia is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 8th day of April, 1915.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk,*
By ALF. G. BUHRMAN,
Assistant Clerk.

20 In the Supreme Court of the District of Columbia.

At Law. No. 57414.

UNITED STATES ex Rel. ALWARD

VS.

W. J. LATIMER, Judge of the Juvenile Court of the District of
Columbia.

Bill of Exceptions.

Be it remembered, that at the hearing of the above entitled cause on the 23rd day of January, A. D. 1915, in this Court, before Mr. Justice Gould, upon the issue raised by the petition and motion to quash the writ of certiorari, issued upon said petition, the trial Court

after hearing held that the writ of certiorari had been improvidently granted on the said petition for that it appeared that the respondent Judge of the Juvenile Court of the District of Columbia had not proceeded to or announced a final judgment in the proceeding sought to be quashed, to which said ruling of the Court the petitioner then and there duly excepted and said exception was then by the said Justice duly noted in his minutes.

And thereafter the petitioner by his attorney, duly presented and submitted the foregoing bill of exceptions and prayed the Court to settle and sign the same and to cause the same to be made a part of the record herein, which is accordingly done, nunc pro tunc, this 10th day of March A. D. 1915, in duplicate, of which one copy shall be filed with the Clerk of this Court and the other copy shall be filed with the Clerk of the Court of Appeals as provided by the rules of that Court.

21

ASHLEY M. GOULD, *Justice.*

[Endorsed:] Copy. At Law. No. 57,414. United States ex rel. Alward vs. W. J. Latimer, Judge of the Juvenile Court of the District of Columbia. Bill of Exceptions.

Endorsed on cover: District of Columbia Supreme Court. No. 2812. The United States of America upon the relation of I. Q. H. Alward, appellant, vs. J. Wilmer Latimer, &c. Court of Appeals, District of Columbia. Filed Apr. 12, 1915. Henry W. Hodges, clerk.

COURT OF CHANCERY

IN THE CITY OF NEW YORK

Plaintiff,

vs.

Defendant.

Comes now the Defendant, and alleges that the Plaintiff is indebted to the Defendant for the sum of \$100.00, which sum the Defendant is ready to pay to the Plaintiff, with interest thereon at the rate of six per cent per annum, from the date of the filing of this complaint until the same is paid.

And the Defendant prays that the Plaintiff be decreed to pay to the Defendant the sum of \$100.00, with interest thereon at the rate of six per cent per annum, from the date of the filing of this complaint until the same is paid.

And the Defendant prays that the costs of this action be awarded to the Defendant.

And the Defendant prays that the Plaintiff be decreed to pay to the Defendant the sum of \$100.00, with interest thereon at the rate of six per cent per annum, from the date of the filing of this complaint until the same is paid.

And the Defendant prays that the costs of this action be awarded to the Defendant.

SEP.-10.-1915

Henry W. Hodges.
Clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1915.

No. 2812.
No. 3, Special Calendar.

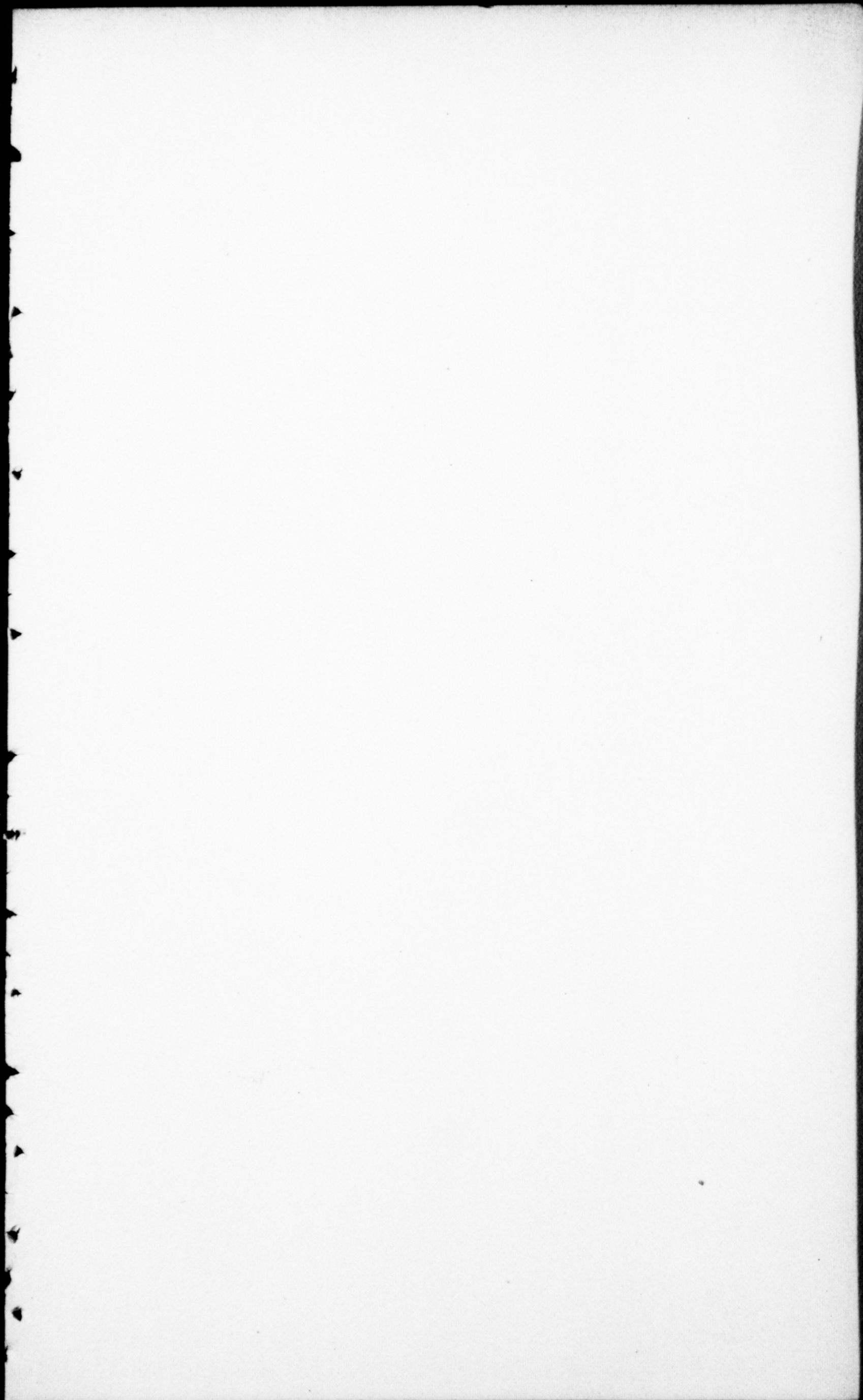
THE UNITED STATES OF AMERICA UPON THE
RELATION OF I. Q. H. ALWARD, APPEL-
LANT,

vs.

J. WILMER LATIMER, JUDGE OF THE JUVENILE
COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANT.

F. EDWARD MITCHELL,
Attorney for Appellant.



In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

No. 2812.

No. 3, Special Calendar.

THE UNITED STATES OF AMERICA UPON THE
RELATION OF I. Q. H. ALWARD, APPEL-
LANT,

vs.

J. WILMER LATIMER, JUDGE OF THE JUVENILE
COURT OF THE DISTRICT OF COLUMBIA,
APPELLEE.

BRIEF FOR APPELLANT.

Statement of Case.

In the Supreme Court of the District Columbia the appellant, by petition duly verified, caused to be issued from said court a writ of certiorari directed to J. Wilmer Latimer, judge of the Juvenile Court of the District of Columbia, appellee, commanding him to certify to said court the proceedings in the case of the United States *vs.* I. Q. H. Alward, No. 18,878.

The petition set forth that appellant was a citizen of the United States and a member of the bar of said court; that on October 29, 1914, he had been served with a subpoena from the Juvenile Court requiring him to attend said court as a witness for the defendant in a case wherein a certain John Zell was defendant, being num-

ber 17,385 of said court. That on attending said court in obedience to its summons he was surprised to find that the judge of said court (appellee) was about to attempt an investigation of his conduct, in his relations with said Zell, a former client, and over the protest of appellant, the appellee proceeded to hear testimony in an effort to show that appellant (petitioner) had taken the said John Zell to relator's farm in Maryland while a non-support cause was pending against him in the said Juvenile Court and had thereby been guilty of contempt . . . "the respondent (appellee) found your petitioner (appellant) guilty of having advised, aided and abetted the said Zell in absenting himself from the jurisdiction in order to hinder and delay the administration of justice" (Rec., p. 2).

The evidence was conclusive that whatever advice was given was given in the office of appellant, in the Columbian Building, 416 Fifth Street. Immediately after announcing his decision in the Zell case, the respondent (appellee), on October 29, 1914, caused a rule to be issued requiring appellant to show cause November 2, 1914, at 10 o'clock a. m., why he should not be adjudged in contempt of court, and "suspended from practice herein" (Rec., p. 2). That on said day appellant appeared and was compelled to go to hearing without counsel and without the services of a stenographer, both of which he demanded, and thereupon he filed the objections to the jurisdiction of the court appearing on page 3 of the record. That after hearing testimony (Rec., pp. 3-4) appellee took the matter under advisement and thereafter on November 6th, issued a substitute rule returnable November 12, 1914, at 10 o'clock requiring appellant to show cause why he should not be "adjudged in contempt of this court *and punished therefor* and suspended from practice before said court (Rec., pp. 4, 5).

Paragraphs 7 and 8 of said petition aver the fact to be that the appellee is about to subject appellant to the embarrassment of another hearing for an alleged contempt, committed, if at all, out of the presence of the court, upon a rule which is not supported by the oath or affidavit of any person, and that said court is without jurisdiction to hear and determine the issues raised because of its being a court of limited or inferior jurisdiction, without power to punish for contempts except such as are committed in its presence; that the issues have already been passed on by appellee adversely to petitioner (appellant), and that he is without adequate means of protecting his rights as a citizen and a member of the bar without the intervention of the court by its writ of certiorari (Rec., p. 5).

The appellee filed a motion to quash the writ on the ground that "the Juvenile Court of the District of Columbia has jurisdiction to punish for contempts interfering with the administration of justice in that court, whether committed within or without the presence of the court," and that said court "has inherent jurisdiction to suspend from practice before the court any person guilty of the misconduct recited in the rule to show cause, issued by the court against the petitioner herein" (Rec., p. 9). On hearing the writ was quashed on the ground that it "had been improvidently granted on the said petition for that it appeared that the respondent judge of the Juvenile Court of the District of Columbia had not proceeded to or announced a final judgment in the proceeding sought to be quashed" (Rec., p. 12).

Which ruling was excepted to by appellant and forms the only error assigned (Rec., p. 10), as set forth in the bill of exceptions signed by the trial justice (Rec., pp. 11-12), and from which this appeal is prosecuted.

ARGUMENT.

Two questions are presented by this record: (1) Should the judge of the Juvenile Court have been allowed to proceed to a final judgment before the writ of certiorari was applied for and issued by the Supreme Court of the District of Columbia, and (2) Had the Juvenile Court any jurisdiction whatever to punish for a constructive contempt and to suspend an attorney from practice before it.

The fact is, as to the first proposition, that the judge of the Juvenile Court had already concluded a final judgment against appellant, for the petition alleges that the appellee, after taking evidence on that fact, found the "petitioner (appellant) guilty of having advised, aided and abetted the said Zell in absenting himself from the jurisdiction, in order to hinder and delay the administration of justice" (Rec., p. 2). It was after this finding that the first rule to show cause was issued (Rec., p. 2), and the arbitrary conduct of the appellee in compelling appellant to proceed to hearing without counsel or a stenographer is conclusive that whatever happened the prejudgment of the guilt of appellant was to stand and this is all the more apparent when appellee refused to rule upon questions touching his jurisdiction (Rec., p. 3), proceeded to take testimony, took the matter under advisement and two days later issued another so-called substitute rule against appellant with a view to subjecting him to another hearing on the day therein named (Rec., pp. 4, 5). Can it be possible that arbitrary conduct such as this should be allowed to continue against a person until such time as a judge of an inferior court should enter a final judgment, especially if the whole proceeding is void. If this be true the judge by substitute rules could harass and annoy one, in violation of law and at great expense to the person proceeded against, without possibility of redress,

except upon final judgment which would never be rendered. Such can not be the law. The common law writ of certiorari is in force in this District and its purpose was discussed by this court in the case of *Hendley vs. Clark*, 8th App., 183, and while the question there was the use of the writ on the ground of concurrent jurisdiction this language was used:

“The proper purpose of the writ of certiorari under the common law is merely to determine whether a court which seeks to proceed with a cause has jurisdiction so to do (citing cases). And for this purpose ordinarily, it will lie either before or after judgment, unless there is a right of appeal, in which case it will not lie after judgment for obvious reasons. For a writ of certiorari can not be made a substitute for a writ of error or to serve the purposes of an appeal. In States where a different rule prevails, it appears to be under statute.”

There is no doubt that where an inferior court is proceeding beyond or without its jurisdiction, the writ of certiorari is the proper remedy, and the court appealed to in such a case for the writ will grant it and will restrain such inferior court. This, however, will only arise on the question of jurisdiction, and not as to matters of form and procedure.

The District vs. The Gas Light Co., 3 Mackey, 343, 349-50.

The Juvenile Court is a subordinate, inferior tribunal, and in this case was proceeding without jurisdiction, its judgment would be totally void and therefore may be attacked either directly or collaterally.

U. S. vs. West, 34 App., 16.

“Where the court has proceeded without jurisdiction the writ (of certiorari) can be substituted for an appeal.”

U. S. vs. West, *supra*.

"This writ, by long established custom and legal usage, is appropriate to review the proceedings of a subordinate, inferior tribunal, which has proceeded, or is proceeding, to judgment without jurisdiction."

U. S. *vs.* West, *supra*, citing Bates *vs.* Dist. of Col., 1 McA., 433.

It would seem from the foregoing that the writ should not have been quashed on the ground stated by the presiding justice below.

Secondly: Had the Juvenile Court jurisdiction to punish for contempt such as appears in this record? That it was a constructive contempt is conceded by the motion to quash, which claims jurisdiction to punish for contempts whether committed within or without the presence of the court.

The contempt alleged is criminal in its nature.

Gompers *vs.* Buck Stove and Range Co., 221 U. S., 418.

As we have seen, the court is one of limited jurisdiction (U. S. *vs.* West, 34 D. C., 12, 15), and its powers are therefore limited by the statute creating it, and being an inferior court it has no power in the absence of legislative authority to punish for contempt, inherent authority to so punish being confined to courts of general jurisdiction.

Mr. Justice Field in *Ex parte Robinson*, 19 Wall., 505, says:

"The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts and, consequently, to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any

subject they became possessed of this power. But the power has been limited and defined by the act of Congress of March 2, 1831, 4 Stat. at L., 487."

This act is contained in paragraph 725 of the Revised Statutes, and is as follows:

"The said courts (courts of the United States) shall have power to impose and administer all necessary oaths, and to punish by fine or imprisonment, at the discretion of the court, contempts of their authority: Provided, That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

Speaking of this section, Mr. Justice Cole "In the matter of the Petition of Perry H. Carson," 26 Washington Law Reporter, 152, said:

"It was not claimed by counsel who represented the Government that that section of the statute would apply to a justice of the peace in the District of Columbia, and clearly it would not under the decision of the Court of Appeals in the case of the United States *vs.* Mills, 26 Wash. Law Rep., 89. The Court of Appeals in that case held that the words 'courts of the United States,' as used, in the general statutes refer to courts of the United States of *general jurisdiction* and not to special tribunals. It was determined in that case that those words do not include the Police Court of this District, although that is a court of the United States, created by an act of Congress.

The inevitable conclusion is, that section 725 does not apply to justice of the peace courts in this District."

Section 725, above quoted, appears to be the only section in the United States statutes that relates to punishment for contempts, and, as before remarked, the section only related to courts of the United States, and as held in the Carson case, courts of the United States are only courts of general jurisdiction created by the United States, and not special tribunals so created.

In the case of *Moss vs. United States*, 23 Appeals, 475, it was questioned whether the Supreme Court of the District of Columbia was a court of the United States within the provisions of section 725 of the Revised Statutes. Mr. Justice Alvey in this case said:

"We are clearly of opinion that the Supreme Court of the District of Columbia is a court of the United States, and that S. 725 of the Revised Statutes of the United States, U. S. Comp. Stat., 1901, p. 583, applies to contempts of court committed therein, if of the class of contempts designated in said section; and that the punishment for such contempts can only be such as is prescribed by said section of the Revised Statutes."

Independent of authority granted by statute courts of record of superior jurisdiction, whether civil or criminal, possess inherent power to punish for contempt of court.

9 Cyc., 26.

In re Debs, 158 U. S., 564.

Ex p. Terry, 128 U. S., 289.

Ex p. Robinson, 19 Wall., 505.

It has been held that in the absence of legislative authority inferior courts have no power to punish for contempt.

9 Cyc., 28.

"In the absence of legislative authority the exercise of the power is often permitted to punish direct contempts committed in the immediate presence of the court which obstruct its proceedings."

Wyatt *vs.* People, 17 Colo., 252.

In re Cooper, 32 Vermont, 253.

It will be observed that the power of the Police Court to punish for contempt contained in section 48 of the Code is in the identical language of the power given the Juvenile Court in Paragraph 17 of the act of its creation, and yet it has been held that Paragraph 725 of the Revised Statutes relating to contempts does not apply to the Police Court for the reason that that court is not a court of general jurisdiction.

In re Carson, 26 W. L. R., 152.

The conclusion of the whole matter, it is submitted, is that a court of general jurisdiction has the inherent power to punish for contempts committed both in and out of its presence; that this power is modified by section 725 of the Revised Statutes. Further, that an inferior court, being any court of less than general jurisdiction, has no power to punish for contempts committed outside of its presence. The Juvenile Court is an inferior court in that it has not general jurisdiction.

It is respectfully submitted that the act charged as contempt in the present case having been committed out of the presence of the court, and that the Juvenile Court was without jurisdiction to punish it as a contempt and that its attempt so to do was void.

As to the Power of the Court to Suspend Respondent From Practice.

The rule required that appellant "show cause herein if any he has, on Monday, November 2, 1914, at 10

o'clock A. M., why he should not be adjudged in contempt of this court, and suspended from practice herein."

It is submitted that upon this rule the court had no jurisdiction to suspend the respondent from practice for the following reasons:

1. Because it is sought to suspend him from practice as a punishment for his alleged contempt.

If he can not be held guilty of contempt for the reason that the act complained of was committed out of the presence of the court, it follows that he can not be punished for that act by being suspended from practice in said court.

2. Because Paragraph 17 of the act creating said court provided that the punishment for contempt be "by fine not exceeding \$20, and imprisonment not exceeding forty-eight hours, or either," and does not provide that a contempt may be punished by suspension from practice. In *Ex parte Robinson*, 19 Wall., 505, the court said:

"The law happily prescribes the punishment which the court can impose for contempts. The 17th section of the Judiciary Act of 1899, 1 Stat. at L., 73, declares that the court shall have power to punish for contempts of their authority in any cause of hearing before them, by fine or imprisonment, at their discretion. The enactment is a limitation upon the manner in which the power shall be exercised, and must be held to be a negation of all other modes of punishment. The judgment of the court disbaring the petitioner, treated as a punishment for a contempt, was, therefore, unauthorized and void."

3. Because it is submitted that said court having no separate bar from the Supreme Court of the District of Columbia and no roll of attorneys, and, therefore, no power to admit to practice before it, is by that fact alone deprived of power to disbar.

Further from Ex parte Robinson, *supra*:

“The power to disbar an attorney proceeds upon very different grounds. This power is possessed by all courts *which have authority to admit attorneys to practice*. But the power can only be exercised where there has been such conduct on the part of the parties complained of as shows them to be unfit to be members of the profession. Parties are admitted to the profession only upon satisfactory evidence that they possess fair private character and sufficient legal learning to conduct causes in court for suitors. The order of admission is the judgment of the court that they possess the requisite qualifications both in character and learning. They become by such admission, officers of the court, and, as said in Ex parte Garland, 4 Wall., 378, ‘they hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded.’ ”

It is therefore respectfully submitted that the writ of certiorari was not improvidently granted in this cause by the trial court, but that the court should have restrained the judge of the Juvenile Court and quashed the illegal proceedings against appellant, and the failure to do so was error.

Respectfully submitted.

F. EDWARD MITCHELL,

Attorney for Appellant.